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EX PARTE OR LATE FILED

September 2, 1999

BY HAND

Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW -- Room TW-A325
Washington, D.C. 20554

Re: CC Docket Nos. 96-98, 95-185, 98-147

Dear Ms. Salas:

On September 1, 1999, Michael Olsen, Deputy General Counsel of NorthPoint Communications, Inc. and Richard Metzger of Lawler, Metzger, and Milkman, LLC, counsel to NorthPoint, met with Dorothy Atwood, Legal Advisor to Chairman Kennard and Sara Whitesell, Legal Advisor to Commissioner Tristani. In these meetings, Messrs. Olsen and Metzger presented NorthPoint's views on certain issues pending in the above-referenced proceedings, including NorthPoint's reliance on access to unbundled loops and inter-office transport in providing its xDSL services. NorthPoint's position on those issues is set forth in its comments in the above-referenced proceedings and the enclosed document.

Pursuant to section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. §1.1206(b)(1), an original and one copy of this letter and enclosure are being provided to you for inclusion in the public record of each of the above-referenced proceedings.

Sincerely,

A. Richard Metzger, Jr.

Enclosure

cc: Dorothy Atwood
Sara Whitesell

NorthPoint

UNE REMAND

CC Docket 96-98

August 31, 1999

Michael Olsen

Deputy General Counsel

UNE: DSL Capable Loops

- August 1998 *Advanced Services Order* required the provision of DSL capable loops regardless whether ILEC deployed any or similar DSL services
  - **Clean copper, free of bridged taps, loading coals, repeaters, DLCs or other intervening electronics**
  - **<u>UNE DSL capable Loop</u>:**
    - **Commission should confirm that ILEC is obligated to provide to CLECs a clean copper DSL-capable loop**
    - **Forbid ILEC practice of forcing CLECs to use panoply of artificially limited wholesale loop products that are designed for ILEC retail services or that are tethered to unapproved, unaccepted draft standard loop classes (SBC DSL loop proposals, TX, KS, e.g.)**
- ILEC must make available any DSL-capable loop functionality where doing so is technically feasible and can be or is made available for the ILEC's own retail services
  - **<u>UNE DSL shared line loops</u>:**
    - **ILEC shall make available to requesting carrier unbundled DSL capable shared line loop consistent with T1.413 (Annex E) standard**

UNE: DSL Loop Operation Support Systems (OSS)

- Today, loop makeup data is made available on system interfaces in a formal useful only for limited ILEC retail ADSL offerings.

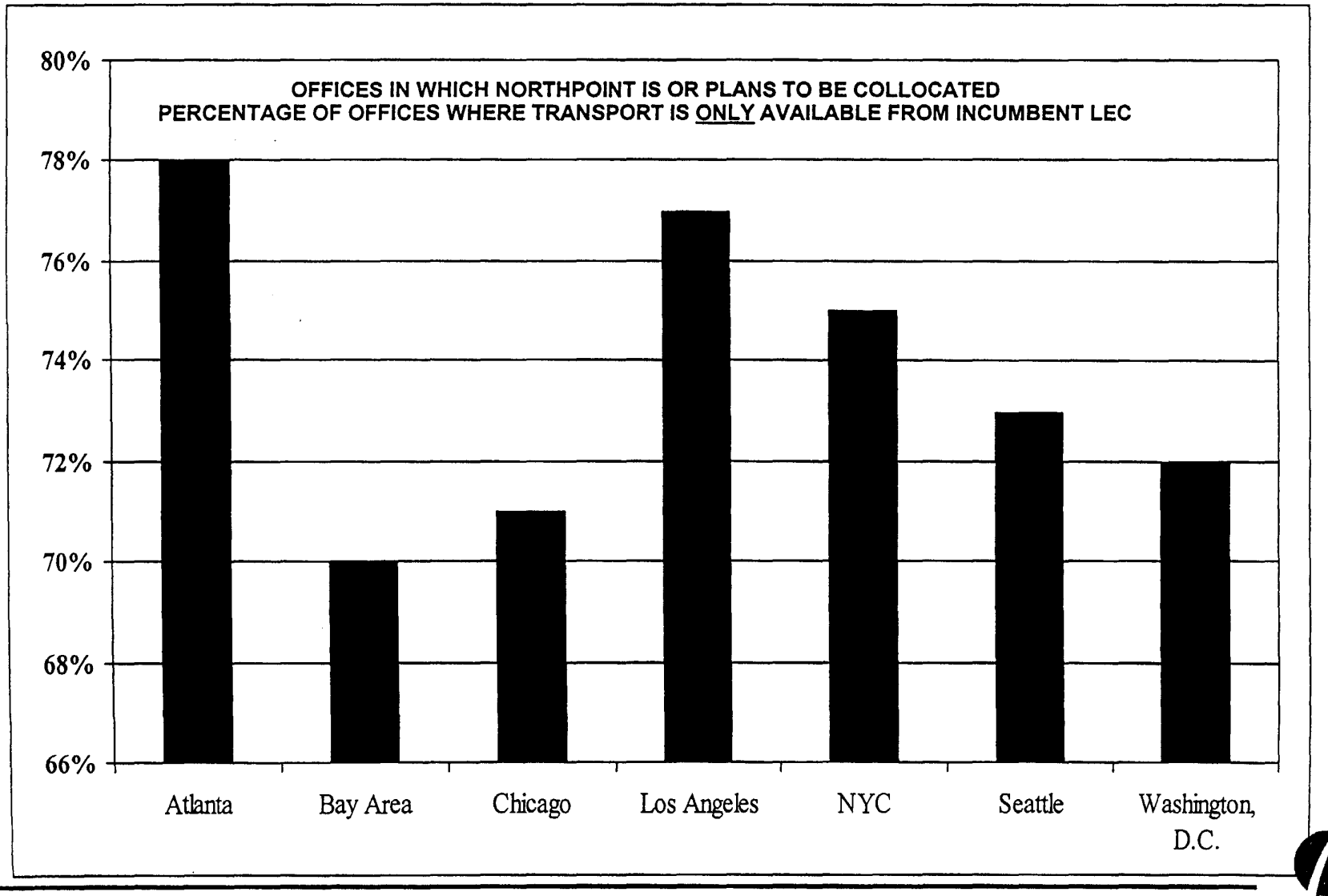
  Example: ILEC ADSL only works up to 18,000 feet, and often is not offered between 12,000 and 18,000 feet to end users with loops that need conditioning. CLEC SDSL works up to 24,000, and IDSL on loops exceeding 36,000 feet. ILEC OSS returns unbundled DSL loop orders to end-users more than 18,000 feet as "ineligible" or "unavailable" and on loops from 12-18,000 feet as "possibly ineligible" or "unavailable".

- ILECs must either:
  - **Prepare "CLEC retail" electronic loop makeup database suitable for each CLEC retail DSL service as ILECs have prepared for their own retail DSL service (parity; exhaustive solution); or**
  - **Prepare "CLEC wholesale" electronic loop makeup database with sufficient loop makeup data that each CLEC can determine loop suitability for its own retail DSL service (subparity; but acceptable and more easily completed). This would include loop length and gauge, the presence, location and number of bridged taps, repeaters, loading coals, or other electronics; the presence of alternate copper loops; the presence of other interfering technologies in the same or adjacent binders)**

UNE: Dedicated Interoffice Transport

- DSL CLECs are FAR more widely deployed than any other collocator or competitive transport provider.
- As part of its business plan, NorthPoint generally seeks to use non-incumbent LEC transport facilities and services wherever possible to reduce provisioning difficulties and delays
- NorthPoint periodically surveys markets it has entered or plans to enter to determine what alternative transport services or facilities are available between offices where it is or will be collocated
- Bar chart shows the results of surveys conducted since the first quarter of 1999 for certain clustered metropolitan areas where NorthPoint has installed co-located facilities
- Bar chart reflects that in substantial majority of offices there is NO alternative to ILEC UNE interoffice transport

UNE: Dedicated Interoffice Transport (cont'd)



UNE: Dedicated Interoffice Transport (cont'd)

- Presence of Non-Incumbent LEC Transport Facilities Does Not Necessarily Signify Competitive Transport Is Available
  - **Non-incumbent LEC with transport facilities may use those facilities solely to provide service for its own traffic**
  - **Non-incumbent LEC may not have adequate capacity to handle traffic from competitive LECs, such as NorthPoint, or may have reserved space for competitive LECs or itself**
  - **Non-incumbent LEC may use unbundled transport elements from incumbent LECs as part of its transport network**
  - **Non-incumbent LECs may have unbundled transport available in one CO but cannot complete connection BETWEEN given Central Offices.**

UNE: DSLAM

- DSL CLECs are not "impaired" in the absence of an unbundled DSLAM so long as the DSL CLEC has equal access to the end-user customer:
  - **One or more DSL CLECs have opportunity to collocate at central office and address end-users served from that office (collocation order compliance)**
  - **Collocated DSL CLECs can serve end-users by obtaining non-discriminatory access to DSL capable loops and DSL capable loop functionality**
    - **A single DSL-capable Clean Copper loop is provisioned on a timely basis (clean copper DSL loops)**
    - **Electronic access to real-time OSS loop makeup data permits DSL CLECs to provision and utilize DSL-capable loop (electronic loop makeup data)**
    - **DSL CLEC has same access to loop functionality to serve end-users as is available to ILEC (line sharing)**
  - **Collocated DSL CLECs are able to address end-users served through remote terminals where ILEC deploys DSL functionality in those remote terminals**
    - **Where an ILEC has deployed DSL functionality in a remote terminal such that the ILEC has superior (discriminatory) access to that end user, the ILEC should unbundle the DSL functionality at that remote terminal to collocated CLECs (preserves competitive options for end-users served by DLCs)**

UNE: DSLAM (cont'd)

- Key policy considerations:
  - **Requiring the unbundling of DSLAMs likely to make further facilities based DSL competition uneconomic**
    - **UNE DSLAM prices, like voice UNE prices, likely to be low enough to deter investment in facilities and to slow or defeat facilities competition, but unlikely to be sufficiently low to cause substantial competitive entry**
    - **Robust facilities-based DSL competition is superior to resale or unbundling of limited ILEC DSL offerings**
  - **Where CLECs *can compete on a nondiscriminatory basis* (e.g, collo, DSL loops, line sharing, OSS) DSLAM unbundling is unnecessary**
    - **Where ILEC permits nondiscriminatory access to end user, there are no substantial barriers to entry**
    - **More than 3,000 collocated DSLAMS by year end 1999 demonstrate that DSLAM unbundling in <u>most circumstances</u> is unnecessary**
  - **Where CLEC cannot compete on nondiscriminatory basis (e.g, no collocated DSL CLEC, no nondiscriminatory loop access through line sharing, or where the ILEC has exclusive access to end user served through DLC by virtue of DSL deployment at Remote Terminal), then to ensure that end-user has competitive options unbundling is necessary.**

UNE: UNE usage for the provision of Advanced Services

- Some ILECs have argued that the Commission should not allow loop/transport combinations to be used solely for exchange access.
- DSL CLECs such as NorthPoint require loop and transport UNEs to offer DSL service.
- DSL service has been classified as special access by the Commission. (GTE order, October 1998)
- The Commission should state unequivocally that DSL carriers can obtain special access service or unbundled loop and transport for the provision of DSL access or exchange access services from collocated space in ILEC central offices